

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

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| Applicant's or agent's file reference PCT-AU-1 | FOR FURTHER ACTION See Form PCT/IPEA/416 | |
| International application No. PCT/JP2004/002780 | International filing date (day/month/year) 04.03.2004 | Priority date (day/month/year) 07.03.2003 |
| International Patent Classification (IPC) or national classification and IPC | | |
| Applicant AUREO CO., LTD. | | |

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|--|-------------------------------------|---|---------------------|--------------------------|------------|----------|--------------------------|-------------|--|--------------------------|------------|----------------------------|-------------------------------------|-----------|---|--------------------------|------------|-------------------------|--------------------------|-------------|--|--------------------------|--------------|---|
| <ol style="list-style-type: none"> This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36. This REPORT consists of a total of 4 sheets, including this cover sheet. This report is also accompanied by ANNEXES, comprising: <ol style="list-style-type: none"> <input checked="" type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of 1 sheets, as follows: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions). | | | | | | | | | | | | | | | | | | | | | | | | |
| <ol style="list-style-type: none"> This report contains indications relating to the following items: <table border="0"> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. I</td> <td>Basis of the report</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table> | <input checked="" type="checkbox"/> | Box No. I | Basis of the report | <input type="checkbox"/> | Box No. II | Priority | <input type="checkbox"/> | Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability | <input type="checkbox"/> | Box No. IV | Lack of unity of invention | <input checked="" type="checkbox"/> | Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement | <input type="checkbox"/> | Box No. VI | Certain documents cited | <input type="checkbox"/> | Box No. VII | Certain defects in the international application | <input type="checkbox"/> | Box No. VIII | Certain observations on the international application |
| <input checked="" type="checkbox"/> | Box No. I | Basis of the report | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Box No. II | Priority | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Box No. IV | Lack of unity of invention | | | | | | | | | | | | | | | | | | | | | | |
| <input checked="" type="checkbox"/> | Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Box No. VI | Certain documents cited | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Box No. VII | Certain defects in the international application | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Box No. VIII | Certain observations on the international application | | | | | | | | | | | | | | | | | | | | | | |

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| Date of submission of the demand | Date of completion of this report |
| Name and mailing address of the IPEA/JP | Authorized officer |
| Facsimile No. | Telephone No. |

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2004/002780

Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:

 - international search (Rule 12.3 and 23.1(b))
 - publication of the international application (Rule 12.4)
 - international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the elements of the international application, this report is based on (replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):

the international application as originally filed/furnished
 the description:
 pages 1-17 _____ as originally filed/furnished
 pages* _____ received by this Authority on _____
 pages* _____ received by this Authority on _____
 the claims:
 nos. 2, 3 _____ as originally filed/furnished
 nos.* _____ as amended (together with any statement) under Article 19
 nos.* 1, 6-8 _____ received by this Authority on 02.03.2005
 nos.* _____ received by this Authority on _____
 the drawings:
 sheets 1/7-7/7 _____ as originally filed/furnished
 sheets* _____ received by this Authority on _____
 sheets* _____ received by this Authority on _____
 a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
 The amendments have resulted in the cancellation of:

 - the description, pages _____
 - the claims, nos. 4, 5 _____
 - the drawings, sheets/figs _____
 - the sequence listing (specify): _____
 - any table(s) related to sequence listing (specify): _____
4. This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

the description, pages _____
 the claims, nos. _____
 the drawings, sheets/figs _____
 the sequence listing (specify): _____
 any table(s) related to sequence listing (specify): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/JP2004/002780

Box No. V **Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

| | | | |
|-------------------------------|--------|-----------------|-----|
| Novelty (N) | Claims | <u>1-3, 6-8</u> | YES |
| | Claims | _____ | NO |
| Inventive step (IS) | Claims | <u>1-3, 6-8</u> | YES |
| | Claims | _____ | NO |
| Industrial applicability (IA) | Claims | <u>1-3, 6-8</u> | YES |
| | Claims | _____ | NO |

2. Citations and explanations (Rule 70.7)

Document 1: JP 2003-40785 A (Combi Corp.), 13 February 2002, entire document, claims 1, 3 and 7, embodiments 1 to 3 & CN 1386510 A & KR 2002/89149 A

Document 2: JP 2002-238494 A (Sunstar Inc.), 27 August 2002, entire document, especially claims, paragraphs [0030] to [0034], test examples 4 and 5 (Family: none)

Document 3: JP 2001-323001 A (Asahi Denka Kogyo Kabushiki Kaisha), 20 November 2001, entire document, claim 8, test example 2 (Family: none)

Document 4: WO 98/26787 A1 (Arnott's Biscuits Ltd.), 25 June 1998, entire document, claims, page 2, lines 4 to 12, examples & AU 9853961 B & 2001-506129 A

Document 5: JP 2002-531510 A (N.V. Nutricia), 24 September 2002, entire document, claim 3, example 4, WO 00/33854 A1 & AU 2000/18966 B & EP 1137424 A1

Document 6: JP 2001-354570 A (Ichimaru Pharcos Co., Ltd.), 25 December 2001, entire document, claim 4; paragraph [0055] (Family: none)

Document 7: JP 2001-231589 A (Kabushiki Kaisha Sofi), 28

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PCT/JP2004/002780

Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

August 2001, entire document, claims

(Family: none)

Document 8: JP 1-137990 A (Daiichi Togyo Kabushiki Kaisha), 30 May 1989, entire document, claims (Family: none)

Document 9: JP 61-146192 A (Satoshi Shinohara), 3 July 1986, entire document, claims; page 1, lower right column (Family: none)

Document 10: JP 10-310515 A (Tomoko Miki), 24 November 1998, entire document (Family: none)

Document 11: JP 62-205008 A (Kabushiki Kaisha Bio Bai Daimaru), 9 September 1987, entire document (Family: none)

Document 12: JP 2001-48796 A (Kabushiki Kaisha Advance), 20 February 2001, entire document (Family: none)

The use of a bacterium belonging to the genus *Aureobacidium* sp. as a culture containing β -1,3-1,6-glucan, and lactic acid bacterium *Enterococcus faecalis* which has been killed by heating together as active ingredients, thereby obtaining a β -glucan containing composition which is effective in physiologically active actions such as improving constipation, an immunopotentiator and a skin moistening agent, and which exhibits excellent uniform dispersibility of lactic acid bacterium as shown by the applicant in the comparative experimental data of the response to the written opinion, is not disclosed in documents 1 to 12 cited in the international search report, and would not be obvious to a person skilled in the art from these documents.